REMARKS

This application has been reviewed in light of the Office Action dated April 5, 2005. Claims 1-11 are pending in the application with claims 4-11 being withdrawn from consideration. Applicant hereby cancels Claims 4-11 and respectfully submits that the following remarks will overcome the Examiner's rejections of Claims 1-3.

In the Office Action, the Examiner objects to certain publications listed in the Information Disclosure Statement ("IDS") filed on February 19, 2004 for failure to with the provisions of 37 C.F.R. §§ 1.97, 1.98 and MPEP § 609. Examiner states that insufficient information is given regarding the date and place of publication of certain references from the World Wide Web. Applicant respectfully submits that sufficient publication information is disclosed in the IDS.

Applicant respectfully asks for reconsideration of the information disclosed in identifying the references. Applicant has provided the titles, relevant pages, and the URL of the web addresses, as the publication location, for each publication. Applicant has also included the date on which the publications were taken from the internet. Applicant believes this date, Nov. 18, 1999, as well as the other biographical information given, provides sufficient publication information to warrant the Examiner's consideration. No other biographical information for these publications was readily available to the Applicant.

Applicant respectfully directs the Examiner's attention to the parent application, Application No. 09/450,571 (now U.S. Patent 6,728,748) to which Applicant claims priority and has incorporated by reference in its application. The same IDS was filed for that application and all references were considered and listed on the cover page of the patent.

Based on the foregoing remarks, Applicant respectfully requests the Examiner to reconsider his objections to the web references Applicant has disclosed in the IDS and further that the Examiner consider these references in its examination of the current application.

Examiner has rejected Claims 1-3 based upon the judicially created doctrine of non-statutory double patenting. The basis of the objection is U.S. Patent No. 6,728,748, which is assigned and owned by Network Appliances, Inc. Network Appliances is also the assignee of the present application. Applicant respectfully submits herewith a Terminal Disclaimer in accordance with 37 C.F.R. § 1.321(c). Applicant expects the Terminal Disclaimer to overcome the Examiner's rejections based on U.S. Patent No. 6,728,748.

Examiner has also rejected Claim 1 as being anticipated by U.S. Patent No. 6,189,033 to Jin et. al. ("the Jin Patent") under 35 U.S.C. §102(e). Applicant respectfully submits that the claims as written are patentably distinct from the Jin Patent and are not, therefore, anticipated. Jin teaches a data service system in which a classifier 101 receives a request and determines which one of several processors should receive the request. The class processors then determine whether or not a request should be granted or rejected. Jin Patent, Col. 8, ll. 46-50. Each of the class processors is pre-assigned to a single content site or class of content sites. Jin Patent, Col. 8 ll. 39-42. Applicant submits that the access processing system 100 that the Examiner equates to the front-end processor of the present invention is not a front end processor but a series of processors tied to a single content site or class of sites serving an entirely different function. Jin does not teach a front-end processor used in conjunction with selecting a class of service from a plurality of service classes. According to the teachings of Jin, each content site, or class is

required to have its own class processor whose function is to reject or accept a request before pushing the request on to a queue.

Additionally, Jin teaches a system that focuses on applying policy for differentiated services to categorize users into queues. The Jin Patent discloses a system that controls the rate of passage or the access rate of a request by placing the request, if it is not rejected by pre-defined control policies, in a queue or series of queues. Jin Patent, Col. 6, ll. 19-66. If the request does not meet the pre-defined control policies, the request is rejected to be cycled through the class processors. In contrast, the present invention as recited in the present claims groups back end servers into service classes and distributes the requests to a back-end server according to the load of each of the servers.

Based on the foregoing remarks, Applicant respectfully submits that Claim 1, as currently submitted, is patently distinguishable from Jin. Applicant submits that Claims 2-3 are not anticipated by Jin as they are dependent from Claim 1.

Examiner cites the Jin Patent as anticipating Claim 2. Applicant submits that, although Claim 1 is believed to be patentably distinguishable, Claim 2 in its present form is also patentably distinguishable from Jin. The portion of the Jin specification cited by the Examiner concerns parameters, i.e. an IP address mask, used to determine the admission control policy. According to Jin, a request is made and the admission control policy determines whether the request is allowed. If the request is allowed by the policy, then it is placed in a queue for subsequent transmission to a consent site. As mentioned above, the admission policy of Jin primarily concerns the data transfer rates of requests to the plurality of class processors, in contrast to Applicant's claimed invention. Jin Patent, Col. 6, ll. 11-26, Col. 6, l. 66 – Col. 7, l. 15.

The Examiner has rejected Claim 3 as also being anticipated by Jin. Applicant respectfully submits that Claim 3, as presently written, is patentably distinguishable from Jin. The admission control policy of Jin is based upon content or resource utilizations as part of a process in accepting or rejecting a request, before placing the request into a queue for subsequent transmission to a content site. Jin Patent, Col. 6, ll. 11-26, Col. 6, l. 66 – Col. 7, l. 15. Jin does not disclose distributing a request to a back-end server based upon a load balancing algorithm. The teachings of Jin concern only accepting or rejecting a request based upon the content or resource utilizations. Jin Patent, Col. 7 ll. 2-15.

As stated above, Applicant respectfully submits that Claim 1, as presently written is not anticipated by Jin, and therefore Claim 2 and Claim 3 are not anticipated.

CONCLUSION

In view of the foregoing remarks, it is respectfully submitted that all claims presently pending, namely claims 1-3, are believed to be in condition for allowance and patentably distinguishable over the prior art of record. An early Notice of Allowance is earnestly solicited.

If, after reviewing this amendment, the Examiner feels there are any issues remaining which must be resolved before the application can be passed to issue, he is invited and respectfully requested to contact the undersigned by telephone in order to resolve such issues.

Respectfully submitted,

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